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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,151	08/21/2006	Kyoichi Takeda	129093	5738
25944 7590 02/26/2010 OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA, VA 22320-4850				
EXAMINER				
LOVE, TREVOR M				
ART UNIT		PAPER NUMBER		
1611				
NOTIFICATION DATE		DELIVERY MODE		
02/26/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

OfficeAction25944@oliff.com  
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**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/590,151	<b>Applicant(s)</b> TAKEDA ET AL.
<b>Examiner</b> TREVOR M. LOVE	<b>Art Unit</b> 1611

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 16 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires **3+1 months** from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-3, 5, 8 and 10

Claim(s) withdrawn from consideration: \_\_\_\_\_

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_

/T. M. L./  
Examiner, Art Unit 1611

/David J Blanchard/  
Primary Examiner, Art Unit 1643

Continuation of 5. Applicant's reply has overcome the following rejection(s): The rejection of claims 6, 7, and 9 under 35 U.S.C. 103(a) as being unpatentable over Gruning et al, in view of Applicant's cancellation of said claims.

Continuation of 11. does NOT place the application in condition for allowance because: As stated in the Final Rejection sent by the Office 10/14/2009, "Gruning teaches a polyglycerol ester that is prepared in two stages. The polyglycerol, which includes diglycerol (diglycerin), is esterified using fatty acid, and then isostearic acid is mixed with the polyglycerol. The composition is heated to 250 Centigrade for three hours. The reaction mixture is then cooled to 180 Centigrade and is mixed with a dimer acid. The composition is then heated again to 250 Centigrade for three hours. An amber-colored viscous product is obtained which is characterized by a hydroxyl number of 68 and an acid number of 1.5 (see column 4, lines 46-62)" (Page 2, Final Rejection, 10/14/2009).

Applicant's attention is drawn to the last sentence of the quoted portion of the Final Rejection, specifically, the "hydroxyl number of 68". Applicant's arguments are based on the composition of Gruning being analogous to those of Comparative Example 1 from the instant specification. As can be clearly seen from the hydroxyl value of Gruning when compared to that of Comparative Example 1, the compositions of Gruning and Comparative Example 1 are in no way equivalent. Applicant correctly identifies that a hydroxyl value of 110.3 falls outside of the instant range set forth in claim 1, however, the hydroxyl value of Gruning (68) is within the claimed range of 30 to 80.